

UPENDRA NATH MITRA'S
LAW OF LIMITATION AND PRESCRIPTION

(IN BRITISH INDIA)

INCLUDING EASEMENTS

VOL. I: TAGORE LAW LECTURES—1882

(Revised, Enlarged and Brought Down to Date)

SIXTH EDITION

BY

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PREFACE.

Twenty years have elapsed since the publication of the last edition of Mr. Mitra's well-known lectures and commentaries on the Law of Limitation and a new edition has long been overdue. A standard treatise of the kind cannot be permitted by the profession to become obsolete and the Publishers have earned its thanks by arranging to bring out a new edition.

The task has been by no means easy. During these twenty years there has been a very great accumulation of case-law on the subject with the inevitable conflict of decisions and *obiter dicta*. The main Act itself has been amended by no less than a dozen amending Acts some of which have effected important changes. All this has had to be assimilated into the original text and notes in the proper place.

The whole of Volume I containing the Tagore Law Lectures (except Lecture XII dealing with Easements) has been revised and brought up to date by me. Lecture XII has been revised by Mr. B. Sitarama Rao, B.A., B.L., Advocate, High Court, Madras, as part of his work on the "Indian Easements Act" and has been published with his permission. In view of the length of time that has elapsed and the numerous changes resulting from case-law as well as from legislation, I felt that I would be justified in exercising the right of an Editor to alter, re-write, and add new passages with a view to make the work complete and accurate. Hence the Lectures will read as if they are delivered now. I have, however, taken care to indicate as far as possible the main changes and additions introduced by me, by enclosing them in square brackets, so that the reader may distinguish between the text and the new matter. It will be noticed that several important topics have had to be largely re-written, *e.g.*, onus of proof under Arts. 142 and 144, adverse possession against mortgagors and mortgagees, widow and reversioners, successive shebais and mutawallis, etc.

Volume II contains a full, critical and analytical commentary on the Sections and Articles of the present Limitation Act (IX of 1908). The materials for this volume had been almost wholly collected, sifted, arranged, and put into shape by my two friends Messrs. K. S. Champakesa Aiyangar, B.A., B.L., and V. K. Srinivasa Aiyangar, B.A., B.L., Advocates of the Madras High Court. But for their willing co-operation and assistance this edition could not have been published. The basic draft of this portion of the work is theirs. I have, however, gone through the whole of it myself and made the necessary alterations and additions and in fairness to them I wish to add that the final responsibility for the commentaries as they stand now, rests with me. The views and criticisms put forward and the suggestions made have been considered by all of us and except in very rare instances they also agree with the same. In the few instances in which they differed I have taken the responsibility of finally deciding the point by myself alone. My thanks are due to them.

The work is not intended as a mere digest. But in deference to the views of the Publishers, references have been given to all the important decisions of various Courts on all points. No decision of any importance which discusses and lays down any new aspect will be found omitted. The implications of the decisions of the Privy Council have been pointed out. On points where there is a conflict of opinion the question has been discussed on principle and a solution has been put forward for acceptance as the right solution. Suggestions have been made for legislative amendments wherever necessary and even a draft of the change that is advocated is given.

At an early stage of the work, I had to decide if the older historical matter and the more ancient rulings should be retained or replaced by the recent decisions alone. Much of the commentaries as bear on the old law may no doubt be omitted in view of the changes that have since taken place. I have, however, decided to keep them and add the references to the more recent decisions. It often becomes necessary to trace the legislative history of a particular section or article. I am reluctant to omit the references which may throw considerable light on a disputed point on such occasions. The materials which have been patiently and laboriously gathered if allowed to lapse will not be easily available to be collected again when required. This

no doubt creates a difficulty as regards the size of the book. I trust the present volumes will be found not too unwieldy.

The delay in the publication of this work may require a word of explanation. The Publishers seem to have originally relied on the services of Rao Bahadur S. Varadachariar, of the Madras Bar, to edit the work. But as he could not find the time and the leisure necessary for the purpose, he finally and definitely expressed his inability to be in charge of the work in the summer of 1928 and desired the Publishers to make other arrangements. A few months later, about August, 1928, I was offered the editorship and I accepted it with the approval and promise of co-operation and support of my two friends who were working at it even before. I have had to go through the materials from the beginning over again.

Volume I went to press about the beginning of this year. The slight changes that became necessary in one or two particulars after the volume was printed have therefore been noted in appropriate places in Volume II. The latter has been brought almost down to the beginning of November, 1931.

I should have preferred to have some more time for revision, but as the Publishers, having regard to the long lapse of time from the *original* announcement desired to have the new edition published without any further delay, I have consented to release the book as it stands for immediate publication.

An exhaustive index is a prime necessity of any good book of reference. This is particularly so in a legal treatise. The index has been carefully prepared by Mr. V. K. Srinivasa Aiyangar. It is hoped that the index and the copious marginal references in the two volumes will greatly enhance the value of the work.

MYLAPORE, MADRAS,
15th November, 1931.

S. PANCHAPAGESAN.

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